



COURT FILE NUMBER

1901-

15956

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

**RODERICK J. MCLEOD AND BRENDA
MCLEOD**

DEFENDANT

CIDEL ASSET MANAGEMENT INC.

DOCUMENT

STATEMENT OF CLAIM

**PARTY FILING THIS
DOCUMENT**

**RODERICK J. MCLEOD AND BRENDA
MCLEOD**

**ADDRESS FOR SERVICE AND
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File Ref.: 8749.001

NOTICE TO DEFENDANTS

You are being sued. You are a Defendant.

Go to the end of this document to see what you can do and when you must do it.

STATEMENT OF FACTS RELIED ON:

Summary of Claim

1. This claim relates to the negligence, gross negligence, breach of contract, and breach of fiduciary duty of the defendant, Cidel Asset Management Inc. ("**Cidel**"), which transferred \$616,910.87 (USD) of the plaintiffs' funds to an unknown malicious third party fraudster in the face of Cidel's own system-generated red flags. Ignoring both these red flags and industry best practices regarding wire transfers, Cidel caused the plaintiffs to lose \$586,065.87 (USD), which could not be recovered after the fraud was perpetrated.

Parties

The Plaintiffs

2. Roderick and Brenda McLeod (the "**McLeods**") are residents of Calgary, Alberta. The McLeods had a longstanding relationship with Cidel, and for decades relied on and placed their trust and full confidence in Cidel to securely manage their family's funds.

The Defendant

3. Cidel is an active Ontario corporation extra-provincially registered in Alberta.
4. Cidel is a Canadian private bank and asset manager. Cidel assists individuals and families throughout Canada in securely managing and growing their finances and holds itself out as providing all of its clients with the highest standards of financial safety and security.

The Relationship between Cidel and the McLeods

5. As their trusted bank and financial manager, Cidel owed the McLeods a duty of care.

6. In the alternative, the trust, confidence, and reliance placed on Cidel by the McLeods render the relationship a fiduciary one in which Cidel was required to conduct the business entrusted to it with care, skill, and diligence.
7. In the further alternative, the relationship between Cidel and the McLeods is governed by contract.

The Intended Condominium Purchase and the Wiring of the Initial Deposit

8. Like many retired Albertans, the McLeods enjoy spending time every year in California. In mid-August 2018, the McLeods contacted Brady Sandahl ("**Mr. Sandahl**") at Keller Williams Realty in Palm Springs, California, about a condominium property located at 215 Viale Veneto in Rancho Mirage, California, proximate to Palm Springs (the "**Property**"). Mr. Sandahl was the listing agent.
9. On or around August 21, 2018, the McLeods made an offer, through Mr. Sandahl, to acquire the Property in the amount of \$635,000.00 USD. That amount was accepted by the developer on or around August 22, 2018. At this time, Mr. Sandahl agreed to act in a dual agency capacity for both the seller and the McLeods.
10. To reserve their interest in the Property, the McLeods were required to wire an initial deposit in the amount of \$19,050.00 USD (the "**Deposit**") to an escrow officer using wiring instructions provided via email by Mr. Sandahl.
11. Relying on the secure and efficient service he had received from Cidel for so many years, Mr. McLeod provided the wire instructions to his money managers, Sarah McIntyre and Karl Berger, at Cidel. Ms. McIntyre and Mr. Berger followed the wire instructions provided by Mr. Sandahl and wired the Deposit to the escrow officer. Ms. McIntyre then contacted Mr. Sandahl directly via email to confirm that the Deposit had been wired, as requested.

The Suspicious Emails

12. The McLeods executed the final purchase agreement relating to the Property on or around October 19, 2018.
13. It was at this time – on or around October 22, 2018 – that suspicious emails purporting to be from Mr. Sandahl were first sent to the McLeods and directly to Ms. McIntyre at Cidel. In each instance, the fraudster used the email address “brady@bradysandalh.com.” While the real Brady Sandahl spelled his name with an “hl” at the end, the fraudulent email address reversed those letters and used “lh”.
14. Cidel's security system picked up on this letter reversal and warned Ms. McIntyre and others at Cidel that the emails sent by “Brady Sandalh” were suspicious. More specifically, in each email that Ms. McIntyre and others at Cidel received on October 22, 2018, one of the following warnings was contained in the subject heading:

“[SUSPICIOUS MESSAGE]”

“SuspiciousEmail – [SUSPICIOUS MESSAGE]”

15. Notwithstanding the red flag warnings contained in the suspicious emails, and contrary to Cidel's policies and industry best practices, no one at Cidel paid heed to the security warnings. Instead, Ms. McIntyre or others at Cidel took the bizarre step of incorporating the suspicious email address into their contacts or address books. As a result, by the time Ms. McIntyre wired the balance of the funds for the purchase of the Property to the fraudster, neither she nor others at Cidel could see the “[SUSPICIOUS MESSAGE]” or “SuspiciousEmail – [SUSPICIOUS MESSAGE]” warning. Cidel's employees had effectively overridden Cidel's own clear security warnings.

16. On October 23, 2018, Ms. McIntyre wired \$616,910.87 (USD) to the malicious third party "Brady Sandah". But for \$26,163.00 (USD), these funds have not been recovered.

Failure to Follow Industry Best Practices & Policies regarding Changes to Wire Instructions

17. In addition to the failure of various persons at Cidel to heed Cidel's clear email security warnings, Ms. McIntyre or others at Cidel also failed to follow Cidel's security policies & procedures and industry best practices regarding the steps to be taken when a request is made to change the wiring destination of funds.

18. On October 22, 2018, the fraudster informed Ms. McIntyre at Cidel that:

"The wiring instructions for the cash to close amount is different from the one you used for the earnest deposit, i have requested for the wiring instructions from the closing coordinator, once received i will forward to you to start wiring funds"

[sic – quotation is as it appeared to Ms. McIntyre]

19. On receipt of any instructions purporting to change the wiring destination of funds, and particularly in circumstances where Cidel had previously wired the Deposit to a different escrow officer, Cidel's policies & procedures and industry best practices required Cidel to take steps to assure itself, by direct communication with the receiving escrow officer, that the new instructions were correct and appropriate.
20. Rather than take any such steps, Ms. McIntyre instead responded to the fraudster's email – which contained the "SuspiciousEmail – [SUSPICIOUS MESSAGE]" warning in the subject line – and complied with the new instructions. She thus caused Cidel to send the McLeods' money to a fraudster.
21. The fraud was discovered on November 1, 2018. Despite efforts by the United States Federal Bureau of Investigation (FBI), among others, only \$26,163.00 has been recovered to date.

Cidel Breached the Required Standard of Care

22. The actions of Cidel's employees in failing to respond to Cidel's email security alerts and in failing to confirm the new wiring instructions with the escrow officer fall well below the standard of care, skill, and diligence required of Cidel and amount to negligence or breach of fiduciary duty at law and in equity.
23. In the alternative, Cidel's failures represent a marked departure from the required standard of care, and constitute gross negligence.
24. In the further alternative, Cidel's actions amount to breach of its contract with the McLeods.

Damages

25. As a result of Cidel's negligence, gross negligence, breach of fiduciary duty, or breach of contract, the McLeods suffered damages in the amount of \$586,065.37 (USD).

Particulars

26. Accordingly, the McLeods claim against Cidel for negligence, gross negligence, breach of fiduciary duty, and breach of contract, particulars of which include:
 - (a) Cidel owed the McLeods a duty of care, fiduciary duty, or – in the alternative – a contractual duty at law;
 - (b) Cidel breached the standard of care, skill, and diligence required of it when it ignored its own security alerts and industry best practices regarding wire transfers; and
 - (c) as a result of Cidel's actions, the McLeods have suffered \$586,065.37 (USD) in damages.

REMEDY SOUGHT

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT:

- (d) \$586,065.37 (USD) in damages;
- (e) interest on the foregoing sums at a commercially reasonable rate or, alternatively, pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1, as amended, and the regulations thereunder;
- (f) solicitor-client costs, including reasonable disbursements; and
- (g) such further and other relief as this Honourable Court may deem fit.

NOTICE TO THE DEFENDANT

You only have a short time to do something to defend yourself against this claim:

- 20 days if you are served in Alberta;
- 1 month if you are served outside Alberta but in Canada; or
- 2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING:

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.